IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1804 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANIL NAVNITBHAI PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DHIRENDRA MEHTA for Petitioner(s) : 1 - 2.
MR DIPEN DESAI ASST GOVT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/05/2006

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the

judgment and order passed by the Gujarat Revenue Tribunal dated 11.6.2004 passed in Revision Application No.TEN.BS.179 of 95 and Revision Application NO.TEN.BS.180 of 1994 as well as the order passed by the Gujarat Revenue Tribunal dated 21.6.2005 passed in Review Application No.TEN.CS/2 of 2004 by which the main Revision Application filed by the petitioners being Revision Application No.TEN.BS.180 of 1994 came to be dismissed and the revision application filed by the State Government being Revision Application No.TEN.BS.179 of 1995 with respect to the land bearing Survey No.495 / 2 (Block No.13) admeasuring Acre 1 – 27 Gunthas which was not considered by mistake in the holding of the petitioners / declarant and remanding the matter to the Mamlatdar and ALT only with regard to the land bearing Survey No.495/2.

2. It appears from the record that Maniben – widow of Chhotubhai Bhaidas – revisionist

submitted the form and/or declaration under Section-10 of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the “Act” for short)and after necessary inquiry the Mamlatdar and ALT by its order dated 31.7.1987 declared that the declarant was holding H-15-78-60 sq.mt of lands as Jarayat land as excess land and is entitled to retain H-12-14-6 sq.mts of land and declared H-3-64-54 sq.mt of lands as surplus excess land under the provisions of aforesaid Act. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT dated 31.7.1987, the revisionist – original declarant preferred an appeal before the Deputy Collector being Appeal No.37 of 1987 and the Deputy Collector by its order dated 11.7.1988 dismissed the said appeal confirming the order passed by the Mamlatdar and ALT. Being aggrieved and dissatisfied with the aforesaid two orders, the declarant preferred revision application before the Gujarat Revenue Tribunal being

Revision Application No.TEN.BS. 288 of 1988 and the Gujarat Revenue Tribunal by its judgment and order dated 30th April, 1992 allowed the said revision application quashing and setting and aside the orders passed by both the authorities below and remanded the matter to the Mamlatdar and ALT for deciding the same afresh after getting canal certificate. It appears that thereafter the Mamlatdar and ALT on remand passed the order dated 23.3.1993 declared Survey / Block No.407 admeasuring H 1-14-00 sq.mtrs of land as excess vacant land. Being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT dated 23.3.1993 – original declarant preferred the appeal before the Deputy Collector, Olpad Prant, Surat and the Deputy Collector by its order dated 6.3.1993 partly allowed the said appeal and modified the order passed by the Mamlatdar and ALT dated 23.3.1993 to the extent that instead of Block NO.407 declared Block NO.403(A) admeasuring H 0-74- 98

sq.mtrs as surplus excess land. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Olpad Prant, Surat dated 6.9.1993 the petitioners – original declarant preferred the revision application NO.180 of 1994 before the Gujarat Revenue Tribunal. Simultaneously, the State Government also preferred the Revision Application being Revision Application No.TEN.BS-179 of 1995 challenging the order passed by the Deputy Collector to the effect that some land bearing Survey No.495/2 Block NO.13 admeasuring Acre 1 – 27 Gunthas of land was not considered in the holding of the original declarant by mistake and/or through oversight. Both the aforesaid revision applications being Revision Application Nos.TEN.BS 180 of 1994 (filed by the original declarant) and the Revision Application No.179 of 1995 (preferred by the State Government with regard to non inclusion of Survey No.495 / 2 Block NO.13 admeasuring Acre 1 – 27 Gunthas in

the holding of the original declarant) came to be heard jointly by the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its common judgment and order dated 11.6.2004 dismissed the said Revision Application filed by the petitioners i.e. Revision Application No.180 of 1994 on merits confirming the order passed by the Deputy Collector, Olpad Prant, Surat dated 23.3.1993 declaring certain peace of land as excess land and confirming order passed by the Mamlatdar and ALT dated 23.3.1993 declaring certain lands as surplus excess land. The Gujarat Revenue Tribunal also decided revision application being Revision Application No.179 of 1995 filed by the State Government and considering the submissions made on behalf of the State Government that so far as the land bearing Survey No.495 / 2 Block No.13 admeasuring Acre 1 – 27 Gunthas was not included in the holding of the original declarant, remanded the matter qua that to the Mamlatdar and ALT and also directed

the Mamlatdar and ALT that on necessary inquiry to pass appropriate order after giving an opportunity to the original declarant to the said extent. It appears that thereafter the petitioners preferred Review Application before the Gujarat Revenue Tribunal being Review Application No.TEN.CS-2 of 2004 under Section-17 of the Bombay Revenue Tribunal Act and the Gujarat Revenue Tribunal by its order dated 21.6.2005 dismissed the said review application . Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 11.6.2004 passed in Revision Application No.TEN.BS-180 of 1994, Revision Application NO.TEN.BS-179 of 1995 as well as the order passed by the Gujarat Revenue Tribunal dated 21.6.2005 passed in Review Application NO.TEN.CS-2 of 2004, the petitioners have preferred the present special civil application under Article 227 of the Constitution of India.

3. Shri Direndra Mehta, leanred advocate appearing on behalf of the petitioner has submitted that the Gujarat Revenue Tribunal has materially erred in remanding the matter only qua the land bearing Survey No.495 / 2 Block NO.13 admeasuring Acre 1 – 27 Gunthas of land and in fact, the Gujarat Revenue Tribunal ought to have remanded the entire matter. He has also further submitted that even on merits when the land bearing Block No.403/A was declared as surplus land, the remaining piece of land would become fragment and therefore, considering the provisions of Section-18 of the Gujarat Agricultural Land Ceiling Act, 1960, the lands of the entire block requires to be retained by the land holders which has not been properly considered by the Gujarat Revenue Tribunal and the authorities below. He has also further submitted that the Gujarat Revenue Tribunal ought to have appreciated the settled legal position in respect of the canal certificate which is

considered as conclusive proof while computing the holding of the declarant as on 1.4.1976 since the Canal Officer who has issued the canal certificate has not been examined by the Mamlatdar and ALT and otherwise also, the same is also not issued in consonance with the mandatory requirement. He has also further submitted that the Gujarat Revenue Tribunal has erred in law in not properly appreciating the contention that the daughter of the original declarant is also entitled to her share in the agricultural land held by the deceased Maniben – original declarant being her daughter, considering the provisions of the Hindu Succession Act, 1956 and therefore, holding of the deceased Maniben -original declarant was required to be reduced to that extent. He has also further submitted that so far as the revision application filed by the State Government before the Gujarat Revenue Tribunal being Revision Application No.TEN.BS-179 of 1995 is concerned, in absence of the challenge

to the order passed by the Mamlatdar and ALT before the Deputy Collector, straightaway the revision application ought not to have been filed by the State Government. It is also further submitted that no choice has been given to the petitioner to retain the land and/or which land can be declared as surplus land and therefore, it is requested to allow the present special civil application.

4. Shri Dipen Desai, learned AGP for the respondent – State Authorities while supporting the judgment and order passed by the Gujarat Revenue Tribunal has submitted that so far as the revision application submitted by the petitioners before the Gujarat Revenue Tribunal against the order passed by the Deputy Collector, Olpad Prant, Surat dated 6.3.1993 passed in Ceiling Appeal NO.24 of 1993 has been decided on merits and so far as the remand by the Gujarat Revenue Tribunal is with regard to the land

bearing Survey No.495 / 2 Block NO.13 admeasuring Acre 1 – 27 Gunthas of land only which was by mistake not considered in the holding of the original declarant, and therefore the contention on behalf of petitioner that the entire matter ought to have been remanded, cannot be accepted as so far as the order passed by the Deputy Collector against which the revision application was filed by the petitioners is concerned, it has been decided on merits, confirming the order passed by the Deputy Collector. He has further submitted that on all the points i.e. points with regard to the right of the daughter, canal certificate etc, all three authorities below have concurrently held against the petitioners – original declarant and this being petition under Article 227 of the Constitution of India, it is requested to dismiss the same.

5. Heard learned advocates appearing on behalf of the parties.

6. At the outset, it is required to be noted that the present special civil application is filed under Article 227 of the Constitution of India and while exercising the powers under Article 227 of the Constitution of India, this Court is required to consider whether the order passed by all the authorities below are in consonance with the principles of natural justice and in accordance with law or not, and this Court is not required to re-appreciate the evidence on record. The Mamlatdar and ALT has relied upon the certificate of the Canal Officer and it appears from the record and even from the order passed by the Mamlatdar and ALT that the statement of Canal Officer was recorded in presence of the original declarant and there is cross examination by the original declarant also and therefore, the contention on behalf of the petitioners that the statement of the Canal Officer has not been recorded is factually incorrect. Relying on the

certificate issued by the Canal Officer and even his statement that the certificate was issued after necessary inquiry in the presence of the original declarant and on the basis of the inquiry and the record which was sent to the Deputy Executive Engineer and thereafter, the Executive Engineer has issued certificate. There are concurrent findings of fact given by all three authorities below and therefore, the contention on behalf of the petitioners with regard to defect in canal certificate cannot be accepted. All the three authorities below have also considered the submissions on behalf of the petitioners with regard to share of Ms.Sushilaben – daughter of Maniben and all three authorities have in detail elaborately dealt with the same and have also considered that Sushilaben was major and she was also holding other agricultural land. So far as the contention on behalf of the petitioners with regard to the choice with regard to the land which can be declared as surplus land

is concerned, it is required to be noted that accepting submission on behalf of the petitioners, that instead of land bearing Survey NO.407, land bearing Survey No.403(A) should be declared excess surplus land, the Deputy Collector has modified the order passed by the Mamlatdar and ALT to that effect and therefore, it cannot be said that the petitioner is not given any choice as required under the provisions of the Act. So far as the contention on behalf of the petitioners that if Block / Survey NO.403 (A) is declared surplus land then there will be fragment land is concerned, firstly, it is required to be noted that it is the petitioners who had given choice to declare the said land bearing Survey No.403(A) as surplus land and that even otherwise, all three authorities below have concurrently found that there will not be any fragment by declaring Block No.403(A) as surplus land. Under the circumstances, there is no substance in any of the submissions made on

behalf of the petitioners challenging the order passed by the Deputy Collector, Olpad Prant, Surat dated 6.9.1993 passed in Ceiling Appeal No.24 of 1993 as confirmed by the Gujarat Revenue Tribunal while dismissing the Revision Application being Revision Application NO.TEN.BS-180 of 1994 and to that extent the special civil application is required to be dismissed.

7. So far as the challenge to the order passed by the Gujarat Revenue Tribunal passed in Revision Application No.TEN.BS-179 of 1995 preferred by the State Government by which the matter is remanded to the Mamlatdar and ALT qua the land bearing Survey No.495/2 Block No.13 is concerned, it is required to be noted that considering the fact that by mistake the said Survey Number was not included in the holding of the original declarant, the Gujarat Revenue Tribunal has merely directed the Mamlatdar and ALT to pass fresh order qua the said land

considering the certificate to be issued by the Canal Officer etc and that the petitioners will be given ample opportunity to put forth their case and accordingly the Gujarat Revenue Tribunal has passed an order of remand, and that order being remand order, is not required to be interfered with by this Court as at present no prejudice will be caused to the petitioners. The order passed by the Deputy Collector, Olpad Prant, Surat dated 6.9.1993 passed in Ceiling Appeal No.23 of 1993 has been confirmed on merits and the Revision Application No.TEN.BS-180 of 1994 has been dismissed on merits, the contention on behalf of the petitioners that while remanding the matter to the Mamlatdar and ALT qua the land bearing Survey No.495/2, Block NO.13 admeasuring Acre 1 – 27 Gunthas, the entire matter should have been remanded, cannot be accepted as as stated hereinabove, there is no substance in the submissions made on behalf of the petitioners challenging the judgment and order passed by the

Gujarat Revenue Tribunal passed in Revision Application NO.TEN.BS-180 of 1994 confirming the order passed by the Deputy Collector, Olpad Prant, Surat dated 6.9.1993 passed in Ceiling Appeal No.24 of 1993.

8. For the reasons stated above, and more particularly, as such, there is no jurisdictional error, much less an error of law, appears to have been committed by any of the authorities below including the Gujarat Revenue Tribunal, which calls for any interference of this Court in exercise of the powers under Article 227 of the Constitution of India, the present special civil application is required to be dismissed and the same is accordingly dismissed.

[M.R.Shah, J.]

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